

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2
3 Robert Wiesen,

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5 Petitioner,

6 v.

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8 Whatcom County,

9 Respondent.

Case No. 06-2-0008

ORDER DENYING RECONSIDERATION

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11 **This Matter** comes before the Board upon the Petitioner's Motion for Reconsideration of
12 this Board's Order Granting Motion to Dismiss.¹ The County did not respond to the
13 Petitioner's motion within the time periods allowed for response to motions for
14 reconsideration. WAC 242-02-832.

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17 Petitioner argues that his petition should not have been dismissed and that the Board
18 misinterpreted the law when it determined that the County's comprehensive plan does not
19 establish a new mandatory deadline for review of the Bellingham urban growth area (UGA)
20 boundaries. After reviewing the arguments submitted, we find no basis for reconsideration
21 of our order of dismissal and deny the motion for reconsideration.

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24 **DISCUSSION**

25 In our Order Granting Motion to Dismiss in this case, we determined that the County did not
26 create a requirement for a 5-year review of the Bellingham UGA boundaries in its
27 Comprehensive Plan, Urban Fringe Sub-area Plan and Countywide Planning Policies:

28 The Comprehensive Plan, Countywide Planning Policies and Urban Fringe Subarea
29 Plan did not create a new, mandatory deadline for completion of the Bellingham UGA
30 review. Therefore, the County has not failed to comply with deadlines established in
31 its own planning policies for GMA action.

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¹ Petitioner's Motion for Reconsideration, July 27, 2006.

1 Conclusion of Law G.

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3 Petitioner argues that the Board misapplied the law in determining that the comprehensive
4 plan language is not mandatory, but directory. To prevail upon his claim, Petitioner would
5 have to show a clear commitment in the comprehensive plan to a new deadline for a GMA-
6 required action. The referenced language in the Whatcom County comprehensive plan is
7 simply not unequivocal. It provides that "the City and Whatcom County should review
8 certain areas identified in this plan on a priority basis" and it refers to "Bellingham's Five-
9 Year Periodic Review".⁵ It states that "the plan envisions two general types of plan
10 amendments" of which the first type "is a review conducted every five years."⁶ Petitioners
11 point to nothing in the plan language which states that it is setting a new schedule for the
12 RCW 36.70A.130(3) review. Since it is the plan itself upon which Petitioner must rely, it is
13 the plan itself that must create the new deadline. Petitioner has not met his burden to show
14 that the County established a mandatory new deadline for review of the Bellingham UGA in
15 its comprehensive plan.
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18 19 ORDER

20 Having reviewed the arguments of Petitioner, this Board finds no basis for reconsideration of
21 its July 18, 2006 Order Granting Motion to Dismiss. The motion for reconsideration is
22 hereby DENIED.
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25 Pursuant to RCW 36.70A.300 this is a final order of the Board.

26 **Judicial Review.** Any party aggrieved by a final decision of the Board may appeal the
27 decision to superior court as provided by RCW 36.70A.300(5). Proceedings for
28 judicial review may be instituted by filing a petition in superior court according to the

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31 ⁵ Exhibit 3 at 108.

32 ⁶ *Ibid* at 109.

1 procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil
2 Enforcement. The petition for judicial review of this Order shall be filed with the
3 appropriate court and served on the Board, the Office of the Attorney General, and all
4 parties within thirty days after service of the final order, as provided in RCW
5 34.05.542. Service on the Board may be accomplished in person or by mail, but
6 service on the Board means actual receipt of the document at the Board office within
7 thirty days after service of the final order. A petition for judicial review may not be
8 served on the Board by fax or by electronic mail.

8 Service. This Order was served on you the day it was deposited in the United States
9 mail. RCW 34.05.010(19)

10 Entered this 23th day of August 2006.

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14 Margery Hite, Board Member

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18 Holly Gadbaw, Board Member

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22 Gayle Rothrock, Board Member